



IT IS ORDERED as set forth below:

Date: January 21, 2011

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 09-91538

Venita K. Howell,

CHAPTER 11

Debtor.

JUDGE MASSEY

ORDER DENYING APPROVAL OF AMENDED DISCLOSURE STATEMENT

Debtor's initial disclosure statement filed on October 17, 2010 failed to provide "adequate information" within the meaning of 11 U.S.C. § 1125. In particular, (1) it contained no liquidation analysis but rather an unsupported conclusion that her plan, also filed on October 17, 2010, would provide the maximum benefit to all classes of creditors and (2) it contained no supporting financial analysis showing how Debtor would earn the income necessary to fund the plan.

Section 1125(a)(1) of the Bankruptcy Code defines “adequate information” to mean;

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims or interests of the relevant class to make an informed judgment about the plan

“Beyond the statutory guidelines described in § 1125(a)(1), the decision to approve or reject a disclosure statement is within the discretion of the bankruptcy court.” (Citations omitted.) *In re Aspen Limousine Service, Inc.*, 193 B.R. 325, 334 (D.Colo.1996). When determining whether the information provided in the disclosure statement is adequate the court should evaluate the information in light of the particular circumstances of the case and the “need for a quick solicitation and confirmation.” 4 Norton Bankr.L. & P.2d § 86.22.

In re El Comandante Management Co., LLC, 359 B.R. 410, 414 (Bankr. D.Puerto Rico 2006).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectibility of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. N.D.Ga.1984).

Not all of these factors are present in this case, but it is safe to say that the initial disclosure statement is deficient as to factors 4, 6, 7, 8, 12, 14, 15, 16, and 18. At the very least, the disclosure statement for Debtor's plan should have contained projections over a reasonable period of time in the future (at least two years after a projected confirmation) showing how much revenue Debtor should receive each month from all sources (not just her real properties) and what

expenses Debtor will incur in each such month (including personal expenses). Expenses should be itemized. The disclosure statement should state whether rents from a particular property will be placed in trust for that property or might be used to pay other debts, even though it is cash collateral.

The Court brought to the attention of Debtor's counsel the absence of any projections and the deficiency of the liquidation analysis, and Debtor filed an amended disclosure statement on December 14, 2010.

That document also fails to provide “adequate information” within the meaning of 11 U.S.C. § 1125. It incorrectly states that Exhibit A referred to on page 19 in Section VII is a schedule of rental income and expenses. Exhibit A reflects that Debtor’s opinion of the values of various real properties and shows that each of them is presently worth less than the mortgage debt, raising the question of why bother.¹ Even if Exhibit A had shown a schedule of rental income and expenses, that would be merely a snapshot at present, and not a projection of future income and expenses to show that the plan is feasible.

The liquidation analysis attached as Exhibit B shows that several of the properties are not producing sufficient funds to pay mortgage debt, which contradicts the assumption of the plan that Debtor will be able to pay each mortgage as that debt comes due. Because Debtor would presumably have to reaffirm all such debt, it is questionable whether the Debtor’s plan is sound as

¹ One wonders whether Debtor has fully thought through (A) the implication of the plan, which is her reaffirmation of hundreds of thousands of dollars of debt with no sound, or at least disclosed, basis for her assumption that she can repay it or (B) the possible tax effect of forgiveness of indebtedness if her plan fails and her creditors purchase at some future date the properties for less than the debts owed at that time or (C) the burden that the bar to filing another Chapter 7 case for 8 years from the petition date of this case would impose on her if the plan fails and partially secured creditors obtain deficiency judgments against her.

a matter of logic as well as of finance. Like Exhibit A, Exhibit B shows that the plan is at bottom merely a hope for improvement of property values in the future.

The amended disclosure statement fails to show any factual basis for such a hope or that any particular property can be rented in the future. It does not contain a detailed projection of Debtor's income from all sources and of her expenses, including personal expenses, for a period of at least 24 months After confirmation. Therefore, the disclosure statement reflects rank speculation instead of adequate information each creditor in each class needs to decide whether to vote for or against the plan.

For these reasons, Debtor's amended disclosure statement (document no. 84) is
DISAPPROVED.

END OF ORDER